the company shall be entered as members in its register of members; and (2) every other person who agrees to become a member and whose name is entered in the register of members.

It is not disputed that the petitioner is not a member or shareholder of the fourth respondent. However, he claims connection with the fourth respondent by virtue of the fact that he is a shareholder of the first and fifth respondents who in turn are the secured creditor and shareholder respectively of the fourth respondent. It is the petitioner's contention that the scheme will not benefit either the first or fifth respondents and if it goes through, he, the petitioner will suffer loss by virtue of him being a shareholder of the first and fifth respondents.

By his conduct in presenting this petition, the petitioner is questioning the propriety of the scheme as a minority shareholder of the first and fifth respondents when in fact the very same scheme has already been accepted and adopted by the first and fifth respondents and sanction is presently being sought under s 176 of the Act to have such a scheme approved. If indeed the petitioner will suffer loss by reason of the first and fifth respondents adopting the scheme to his detriment, then he should turn to the first and fifth respondents for such loss but as against the fourth respondent he has no cause of action whatsoever nor can he claim that he had been oppressed under s 181 of the Act by a scheme of arrangement proposed by the fourth respondent when he is not even a member or a shareholder of the fourth respondent. As the petitioner's locus standi is regulated by statute, he must comply strictly with the mandatory provisions of s 181 and to that end there had been a misjoinder of parties when the fourth respondent was made a party to this petition.

The petitioner has admitted that he is not seeking to have the fourth respondent wound up but merely seeks relief on the loss he will suffer. To that end, reference to s 218(1)(f) and (i) is irrelevant as they relate to the circumstances when the court may wind up a company.

As the petitioner has no locus standi under s 181 to challenge the scheme of the fourth respondent, I had accordingly allowed the fourth respondent's application to have itself struck out as a party to this action and that the petitioner bear the costs of its application.

Order accordingly.

Solicitors: *Sri Ram, Zulkifly & Kumar*; *Dason & Co.*

Reported by *Ng Sheau Jiuan*

Public Prosecutor v Lau Tuck Weng & Anor

HIGH COURT (KUALA LUMPUR) – FEDERAL TERRITORY CRIMINAL TRIAL NO 34 OF 1985
KC VOHRAH J
11 JULY 1988

Criminal Procedure – Self-disqualification by judge to hear case – Adverse findings against defence witness made by same judge in previous case – Same defence witness to be called in present case – Whether suspicion of bias might exist – Public policy of justice being seen to be done

The accused were charged with an offence under s 39B of the Dangerous Drugs Act 1952. They wanted to call a witness, C, to testify on their behalf. However, C had been charged previously by the same judge for a similar drug trafficking offence but had been acquitted at the close of the prosecution's case. Even though acquitted, adverse findings were made by that court against C. In the present case, it will be part of the defence that C had access to the premises where the drugs were presumably found and which the accused were charged with trafficking and it is likely that blame will be attributed to C. The deputy public prosecutor raised a preliminary point that this court should disqualify itself from hearing the case as it might be suspected of being biased against C.

Held: (1) In a trial under s 39B of the Dangerous Drugs Act 1952, the judge is both judge of law and judge of fact. The court would be placed in an invidious position that if the court were to acquit both the accused at the end of this case that a lingering doubt should arise or exist in the minds of the prosecution and the public that the court had acquitted them because it had previously dealt with a case where it had made certain adverse findings against C in another case and that its adverse findings had influenced its decision in this case.

(2) Public policy requires that, in order that there should be no doubt about the purity of the administration, any person who is to take part in it should not be in a position that he might be suspected of being biased.

(3) The court therefore disqualifies itself from hearing the case.

Cases referred to

1 *Allinson* v *General Council of Medical Education and Registration* [1894] 1 QB 750 (folld)
2 *Vellu Thevar* v *R* AIR 1932 Rang 90 (folld)
3 *R* v *Sussex Justices, ex p McCarthy* [1924] 1 KB 256 (refd)

Legislation referred to

Dangerous Drugs Act 1952 s 39B

Foo Lee Mei (Miss) (Deputy Public Prosecutor) for the Public Prosecutor.

K Radhakrishnan (R Ramanathan (Miss) with him) for the accused.

Cur Adv Vult

KC Vohrah J (deciding a preliminary point raised by the DPP): I commend the deputy public prosecutor (DPP) for bringing to my attention that in this case, a case under s 39B of the Dangerous Drugs Act 1952, it is likely that both the accused would call a witness, Chan Ah Kow, to

testify on their behalf. The defence counsel in fact states that in all probability he will be so calling that person.

This man Chan Ah Kow had been charged before me also for an offence under s 39B. I have called for the records relating to his case FTCT no 39 of 1984. He was charged jointly with one Low Ee Tik with an offence of trafficking in heroin, an offence under s 39B of the Dangerous Drugs Act. He was acquitted at the close of the prosecution's case as I held the prosecution had not established a prima facie case against him. The co-accused was, however, convicted after I had heard his defence. As correctly pointed out by the DPP, Chan Ah Kow did appear as a witness for the defence in that case. I delivered a written judgment on 26 April 1988 where I convicted Low Ee Tik and in my judgment I commented adversely against and made findings which were adverse to Chan Ah Kow and I held that there was complicity on his part in the case with this Low Ee Tik.

The DPP's submission, as I understand it, is that it is likely that blame will be attributed to Chan Ah Kow. Defence counsel has agreed that in the charge in the existing case, access to the premises by person or persons other than the two accused would be relevant to the defence. As I understand it will be part of the defence that Chan Ah Kow had access to the premises where the drugs were presumably found though both the accused are charged for trafficking in them. And Chan Ah Kow in all probability will be called as a defence witness.

Now this is a court of law dealing with a case under s 39B of the Dangerous Drugs Act 1952 where no jury is provided for the trial of a case where, if the accused is convicted, it would result in the death sentence being passed. In other words in the trial under s 39B the judge is both judge of law and judge of fact. It seems to me the court would be placed in an invidious position that if the court were to acquit both the accused at the end of this case that a lingering doubt should arise or exist in the minds of the prosecution and the public that the court had acquitted them because I had previously dealt with a case where I had made certain adverse findings against Chan Ah Kow in another case and that my adverse findings had influenced my decision in this case. I cannot allow that to happen.

Public policy requires that, in order that there should be no doubt about the purity of the administration, any person who is to take part in it should not be in a position that he might be suspected of being biased: *Allinson* v *General Council of Medical Education and Registration*[1] at p 758.

I must also heed the words of the court in *Vellu Thevar* v *R*,[2] that it is a fundamental tenet of the due administration of justice that judges and magistrates should not only be fair and impartial but also should appear to reasonable persons to be fair and impartial and that neither accused persons nor litigants should have any reasonable grounds for supposing that the judge or magistrate who is trying a case in which they are concerned is biased in their favour or against them. To quote the classic words of Hewart CJ in *R* v *Sussex Justices, ex p McCarthy*:[3]

> It is not merely of some importance but of fundamental importance that justice should not only be done but should manifestly and undoubtedly have been seen to be done.

In all the circumstances and also taking into account that the defence counsel also agrees it would not be fair for me to hear the case, I disqualify myself from hearing this case.

Solicitors: *Syarikat Radhakrishnan.*

Reported by *Ng Sheau Jiuan*

Syarikat Islamiyah v Bank Bumiputra Malaysia Bhd

HIGH COURT (KUALA LUMPUR) – SUIT NO C24-3946-1986
GUNN CHIT TUAN J
5 JULY 1988

Banking – Bank paid out money on forged cheques – Whether with customer's mandate – Whether bank liable – Bills of Exchange Act 1949, ss 24, 60

Civil Procedure – Summary judgment – Appeal – Bank paid out moneyon forged cheques – Whether bank paid money without customer's mandate Defective affidavit – Whether supplementary affidavit can cure defect – Whether triable issues exist

This is an appeal against the summary judgment made against the defendant bank. The plaintiff was at all material times a customer of the bank and had a current account at the defendant's Taman Melawati branch office. The bank paid out a total sum of $26,800 on six cheques which were forged and debited the plaintiff's account for the said amount. The bank averred, inter alia, that it paid the six cheques in question in good faith and in the ordinary course of business and should therefore be protected under s 60 of the Bills of Exchange Act 1949.

Held, dismissing the appeal: (1) The object of s 60 of the Bills of Exchange Act 1949 is to protect the paying banker against forged or unauthorized indorsements. The section does not apply to forged or unauthorized signatures which are governed by s 24 of the Bills of Exchange Act 1949.

(2) The court is satisfied that there was evidence adduced to prove on a balance of probabilities in this case that the signatures on the cheques were not those of the plaintiff but were forged without the plaintiff's authority and were therefore wholly inoperative. There was therefore no mandate to the bank. The bank must therefore bear the loss and cannot debit the plaintiff's account.